

EXHIBIT 64

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE

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4 NIKKI BOLLINGER GRAE,)

Individually and on Behalf of)

5 All Others Similarly Situated,)

)

6 Plaintiff,) Case No.

)

7 vs.) 3:16-cv-02267

)

8 CORRECTIONS CORPORATION OF)

AMERICA, et al.)

9)

Defendants.)

10 _____)

11
12
13 CONFIDENTIAL

14 FRIDAY, OCTOBER 23, 2020

15 VIDEOTAPED DEPOSITION OF

16 DONALD WILLIAM MURRAY, JR.

17 VIA REMOTE VIDEOCONFERENCE

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21
22
23 Stenographically Reported by:

Victoria L. Valine, CSR, RMR, CRR, RSA

24 California CSR License No. 3036

25 Job No. 10073530

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23 (All parties appeared remotely via videoconference.)
24
25

1 time, nor will there be an objection to it at a future
2 date.

3 Please indicate your agreement by stating your
4 name and agreement on the record, after which, I will
5 swear in the witness.

6 MR. BLACK: This is Kenneth Black, so
7 stipulated and agreed to.

8 MR. GLENNON: Brian Glennon, so stipulated.

9 CERTIFIED STENOGRAPHER: Raise your right
10 hand, please.

11 Do you solemnly swear the testimony you are
12 about to give will be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 CERTIFIED STENOGRAPHER: Thank you. Counsel,
16 you may proceed.

17 EXAMINATION

18 BY MR. BLACK:

19 Q. Good morning, Mr. Murray.

20 Thank you for being here this morning. As we
21 just went over, my name is Kenny Black. I'm here from
22 the law firm of Robbins Geller Rudman & Dowd. I
23 represent the plaintiff in this matter.

24 Can you please state your full name, phone
25 number, and home address for the record?

1 A. Sure. Good morning Mr. Black.

2 My name is Donald William Murray, Jr.

3 My home address is [REDACTED]

4 [REDACTED].

5 My telephone number is [REDACTED]

6 Q. Thank you. Mr. Murray, have you been deposed
7 before?

8 A. In relation to this case or deposed generally?

9 Q. Let's start have you been deposed before ever?

10 A. Yes.

11 Q. Okay. About how many times?

12 A. I don't know. I would have to go back and
13 count, but a number of times.

14 Q. Would you say more than ten?

15 A. I would say probably 10 to 12 times would be
16 accurate.

17 Q. Have you been deposed in this matter before?

18 A. No, I have not.

19 Q. Have you been deposed in a securities matter
20 before?

21 A. No.

22 Q. Have you been deposed as an expert witness
23 before?

24 A. Um -- yes, I have.

25 Q. Can you describe -- first, how many times have

1 and background, also as an expert.

2 BY MR. BLACK:

3 Q. Did you tell someone that these are the areas
4 you were prepared to testify to?

5 MR. GLENNON: I'm going to object and instruct
6 the witness not to answer unless he can do so without
7 revealing communications he had with counsel.

8 THE WITNESS: I believe that's privileged.

9 BY MR. BLACK:

10 Q. You believe that's privileged.

11 Did you tell anyone at CCA that -- that these
12 subject areas were the ones you were prepared to testify
13 to?

14 MR. GLENNON: Same objection. Any of the
15 non-employer stuff, Mr. Murray.

16 BY MR. BLACK:

17 Q. Mr. Murray, are you going to choose to not
18 answer this question?

19 A. I believe that's my understanding, not to
20 answer the question.

21 Q. Okay. Mr. Murray, do you see under summary of
22 facts and opinions there's a paragraph that goes from
23 page 6 to 7?

24 A. Yes, sir, I do.

25 Q. Okay. Can you read the first sentence,

1 please?

2 A. "Dr. Murray may testify that CoreCivic's
3 operational performance was similar to and compared
4 favorably with BOP's operational performance in the
5 areas of correctional facility management, oversight,
6 staffing, security, and related policies and
7 procedures."

8 Q. Okay. Are you, in fact, prepared to testify
9 that CoreCivic's operational performance was similar to
10 and compared favorably with the BOP's operational
11 performance in the areas of correctional facility
12 management, oversight, staffing, security, and related
13 policies and procedures?

14 A. Yes.

15 Q. Okay. In what ways are you prepared to so
16 testify?

17 A. Well, mainly, Mr. Black, again it's a function
18 of my extensive experience in the corrections industry.
19 I have completed 38 years of service, 22 of which have
20 been in the Federal Bureau of Prisons, 16 years and
21 change here at CoreCivic.

22 And during that nearly four decades in the
23 corrections industry, government service and in private
24 sector, I've garnered quite a lot of information and
25 expertise across a variety of areas.

1 I've had the privilege of auditing facilities,
2 both while I was with the BOP, and auditing facilities
3 certainly in the leadership role -- management role here
4 at CoreCivic.

5 I frequently attend professional meetings, and
6 review information and standards from an ACA
7 perspective -- and ACA stands for the American
8 Correctional Association, by the way.

9 I attend the national commission on
10 correctional healthcare meetings, and participate in
11 those as well.

12 There is a large amount of information in
13 terms of standards for the industry in healthcare, and
14 very broadly in security and key operational areas that
15 we have within our facilities as managers and as
16 professionals -- correctional professionals.

17 I'm very familiar with Federal Bureau of
18 Prisons policies and procedures for more than two
19 decades. I'm very familiar with the tools -- audit
20 tools that have been utilized by the Federal Bureau of
21 Prisons for many years and the updates to those that are
22 utilized in the customer facility and monitorings.

23 I'm very familiar with the information and
24 tools that we utilize to conduct that identical types of
25 evaluation in our facility operation. I'm very familiar

1 with facility client surveys that we utilize that are
2 very similar to the Federal Bureau of Prisons climate
3 surveys of staff and detainees or inmates in our care
4 and custody as in their care and custody.

5 I'm very familiar with their procedures from
6 the perspective that we get updates from the Bureau of
7 Prisons that whenever we have a contractual modification
8 that we update our policies and procedures accordingly.

9 So from a variety of perspectives in terms of
10 my prior experience, more than two decades with the
11 Bureau of Prisons, from my experience hiring staff from
12 the Federal Bureau of Prisons that have left senior
13 management roles to include wardens positions, associate
14 wardens positions, to include healthcare services
15 administrators that have operated Federal Bureau of
16 Prisons healthcare divisions within facilities as audit
17 team members, I -- understanding many of the staffing
18 issues and concerns that impact not only the Bureau of
19 Prisons but staffing issues and concerns that impact
20 virtually most areas of corrections and how that's
21 certainly compounded in the health services areas and
22 other professional services such as mental health.

23 So I have many years of experience, and I'll
24 be relying on that very heavily in the formation of my
25 responses to any questions that might be posed in those

1 areas.

2 And I think as well that my attendance at
3 professional associations and meetings staying current
4 with the latest standards, and requirements, and
5 challenges, listening to my colleagues in the industry
6 both on the government services side, as well as on the
7 private sector side, the challenges that many of us
8 share together in the corrections industry, I believe
9 all of that provides me the opportunity to provide,
10 perhaps, a unique, professional input -- expert input in
11 response to these areas.

12 Q. Okay. So under this section, starting with
13 number 2, summary of facts and opinions, do you see that
14 there are five sentences in this paragraph going from
15 page 6 to 7?

16 A. Yes, sir, I do.

17 Q. On page 7, the second to last sentence begins,
18 "Dr. Murray may also testify about challenges to the
19 BOPs."

20 Can you read that sentence, please?

21 A. Yes, sir. "Dr. Murray may also testify about
22 challenges to the BOP's operational performance in areas
23 of correctional facility management, oversight,
24 training, security, and related policies and
25 procedures."

1 Q. Okay. Did you work at the BOP between 2012
2 and 2016?

3 A. No, sir, I did not.

4 Q. Visit any BOP-run facilities between 2012 and
5 2016?

6 A. Only BOP facilities I visited during that
7 timeframe were ones that we operated at CoreCivic.

8 Q. Okay. So no then?

9 MR. GLENNON: Objection. Vague. Form.

10 THE WITNESS: The response would be no, sir.

11 BY MR. BLACK:

12 Q. When was the last time you stepped foot in a
13 BOP-run facility?

14 MR. GLENNON: Objection. Vague.

15 THE WITNESS: It was probably during a visit
16 at an ACA meeting, when one of the local BOP facilities
17 was up for tour. But since joining CoreCivic, I have
18 not spent a substantial amount of time -- a very limited
19 amount of time, frankly, in BOP operated facilities.

20 BY MR. BLACK:

21 Q. Can you remind me the last time you worked for
22 the BOP was?

23 A. Yes, sir. I left the Federal Bureau of
24 Prisons in August of 2004.

25 Q. Does the BOP send you reports about its

1 with them either at hire or right after hire, but I
2 believe that may have been more than eight years, as I
3 recall.

4 Q. Have you interviewed any inmates of BOP-run
5 facilities in the last eight years about BOP operational
6 challenges?

7 A. No, sir, I have not.

8 Q. You worked at two facilities -- two specific
9 facilities at least when you worked at the BOP; is that
10 right?

11 A. Yes, sir.

12 Q. Whether or not it was in the last eight years,
13 three individuals you mentioned interviewing, did you
14 interview them about riots at BOP prisons?

15 A. No.

16 Q. Did you interview them about murders of
17 correctional officers at any BOP prisons?

18 MR. GLENNON: Objection. Vague.

19 THE WITNESS: We -- we may have discussed some
20 of the tragedies that occurred in the BOP, perhaps, with
21 death of staff or tragedies that occurred at other
22 correctional facilities.

23 But, I'm sorry, I can't give you a specific
24 answer. I don't recall that specifically, no, sir.

25 If we did have that discussion, I'm certain it

1 was probably in passing.

2 BY MR. BLACK:

3 Q. Okay. Did you interview them about the taking
4 of hostages in BOP-run facilities?

5 A. No, sir. I didn't -- didn't interview them
6 about the taking of hostages.

7 Q. Mr. Murray, are you prepared to testify about
8 challenges to the BOP's operational performances in the
9 areas of say security?

10 A. To the extent that we, as an industry, face
11 those types of challenges, I believe I would be, yes.

12 Q. And that's even though you haven't worked for
13 the BOP in over a decade, you haven't gotten any reports
14 from the BOP about their operational performance, you
15 haven't gotten any statistics from the BOP about their
16 operational percentages; is that right?

17 A. I --

18 MR. GLENNON: Objection. Vague. Foundation.
19 You can answer.

20 THE WITNESS: Well, Mr. Black, I don't know
21 that having reports from the BOP would, first of all,
22 would be probably inappropriate for me to have them as
23 an employee at CoreCivic.

24 Secondly, my view is that many of these are
25 challenges that we face as an industry as correctional

1 professionals. Whether or not we work in the BOP,
2 whether or not we work in a state corrections agency,
3 whether you work for one of the privates, whether you
4 work for a city or county jail -- although sometimes the
5 missions are different, and missions can be quite
6 different even within a correctional agency, we face, as
7 an industry, very similar challenges, and I hear about
8 these all the time when I go to my professional
9 meetings, and participate with ACA and NCCHC. Just --
10 it's, I think, fairly common knowledge.

11 BY MR. BLACK:

12 Q. Does the BOP house high security prisoners?

13 A. Well, let me answer that this way. I believe
14 we may have housed some high security individuals, but
15 certainly not as -- as a standard practice.

16 You know, when you operate jail settings, you
17 oftentimes don't know who you have when they first come
18 in the door. They may come into a facility as a jail
19 detainee and end up -- if you don't have all the
20 background on them, either through -- once you receive
21 the additional information, you learn how potentially
22 violent their histories are.

23 And candidly as well, even when people come
24 into lower security facilities initially, sometimes
25 those individuals continue to act out in a way that

1 works their way up the security ladder.

2 So just because someone comes into a jail
3 facility or a low facility initially, doesn't mean that
4 you're not housing someone that, frankly, has high
5 security potential, can be very dangerous individuals
6 regardless of the security level, the jail setting in
7 which you find them.

8 But in response more directly to your
9 question, as a general practice, no, sir, I don't
10 believe we house specifically units of the highest
11 security types of inmates or detainees, per se.

12 Q. Does the BOP house inmates that are high
13 security inmates or high facility -- or high risk
14 facilities?

15 MR. GLENNON: Objection. Vague.

16 THE WITNESS: Yes, they do.

17 BY MR. BLACK:

18 Q. Okay. Between 2012 and 2016, did CCA operate
19 any facilities on behalf of the BOP where the inmates
20 were anything other than low risk?

21 MR. GLENNON: Objection. Vague. Form.

22 THE WITNESS: Mr. Black, we operated
23 facilities that tended to be, you know, as I tried to
24 make, apparently unsuccessfully in my earlier comments,
25 that we did operate the lower security facilities.

1 deficiency"?

2 A. I see that.

3 Q. Does that mean that three different people
4 died in this manner?

5 MR. GLENNON: Objection. Vague.

6 THE WITNESS: I'm not certain, but I believe
7 that would be accurate. They're citing this as a death
8 in care and custody where the concern was that the
9 management was not in accord with the required policies
10 or their policies. I would assume it would be the third
11 person, that would be correct.

12 BY MR. BLACK:

13 Q. Do you know whether the BOP considered this a
14 significant problem?

15 MR. GLENNON: Objection. Vague. Calls for
16 speculation.

17 THE WITNESS: I think it's clear they're back
18 reviewing the operation of the facility, the purpose of
19 the follow-up, and evaluating the overall -- the
20 compliance of that section of our operations,
21 specifically.

22 BY MR. BLACK:

23 Q. Do you know how many repeat, repeat
24 deficiencies resulting -- not resulting. Let me
25 rephrase.

1 Do you know how many repeat, repeat
2 deficiencies related to the death of an inmate the BOP
3 found for CCA at the five BOP facilities between 2012
4 and 2016?

5 MR. GLENNON: Objection. Foundation. Vague.

6 THE WITNESS: I -- repeat deficiencies or
7 multiple repeat deficiencies?

8 BY MR. BLACK:

9 Q. Multiple repeat deficiencies.

10 A. I don't have the specific number in front of
11 me, but I'm sure it's in a report we have somewhere.

12 Q. Do you have a number for BOP-run facilities --
13 the number of times the BOP found that their own
14 facilities engaged in similar repeat, repeat
15 deficiencies?

16 MR. GLENNON: Objection. Vague.

17 THE WITNESS: I know that the Bureau of
18 Prisons certainly has repeat deficiencies. I've
19 participated in audits of those facilities where
20 multiple repeats were found.

21 And so I can't -- excuse me, I'm -- I'm sorry.
22 That was the -- I've certainly seen some repeat, repeat
23 deficiencies in bureau operation.

24 BY MR. BLACK:

25 Q. I'm asking now do you have the data for 2012

1 to 2016 for BOP-run facilities?

2 MR. GLENNON: Objection. Vague.

3 THE WITNESS: Well, Mr. Black, I think as we
4 discussed, no, sir, they would probably not share that
5 information with me as an employee of a private
6 contract.

7 BY MR. BLACK:

8 Q. Would you have -- sorry.

9 Would you have that data for GEO facilities?

10 MR. GLENNON: Same objection.

11 THE WITNESS: Would I have that data for GEO
12 facilities? I certainly would not have that data for --
13 I don't -- for GEO facilities, no.

14 BY MR. BLACK:

15 Q. Would you have it for any competitors of
16 CoreCivic?

17 MR. GLENNON: Same objection. Vague.

18 THE WITNESS: No, I would not, except that
19 that information, to the extent that it might become
20 publicly available or, as you mentioned earlier, made
21 available through FOIA, perhaps, no, I would not have
22 that information and do not have that information.

23 BY MR. BLACK:

24 Q. Let's move to tab 12, so the document in your
25 binder and the electronic document provided to Aptus.

1 e-mail, does it appear that health services continues to
2 be a problem for the Eden facility?

3 MR. GLENNON: Objection. Vague. Calls for
4 speculation.

5 THE WITNESS: From this e-mail, it appears
6 that, of the 23 deficiencies, 8 were found in the health
7 services area which is noted clearly here. But relying
8 on just pure numbers of deficiencies on the line
9 sometimes doesn't provide the appropriate context to
10 determine whether or not an operational area is working
11 as effectively as we would like it to work, or expect it
12 to work or not, because many operational areas are --
13 have -- some operational areas have more complex levels
14 and more complex processes than others. Some are
15 audited more thoroughly, if you would, or more
16 rigorously based on how they break those processes down
17 into their component parts.

18 Obviously health services and security are
19 very complex areas. Require a very detailed review.
20 So, for example, there may be 200 items that get
21 reviewed in the security area, and 160, perhaps, just
22 for example, in a health services area, and other areas,
23 while still very important to the overall operation of
24 our facility, may have far fewer audited components
25 because they have fewer processes -- or that are

1 perceived as perhaps critical processes -- than some of
2 the areas such as health services, or correctional
3 services, security, or even food services obviously is
4 an operational area that, again, each individual inmate
5 or detainee received services from three times per day.

6 So just looking at the number of deficiencies,
7 per se, doesn't always put it in proper context if
8 that's helpful to you, sir.

9 BY MR. BLACK:

10 Q. Okay. Does knowing that two of the
11 deficiencies were repeat deficiencies help give some
12 context to the severity of the issues described?

13 A. It potentially could, but respectfully not
14 necessarily, Mr. Black. If I could just take a minute
15 and explain to you why that that's not always the case,
16 I would like to be able to do that.

17 Q. So I haven't asked you that question.

18 MR. GLENNON: Hold on. Hold on. He's allowed
19 to finish his answer.

20 MR. BLACK: Why are you interrupting. He
21 asked permission to give --

22 MR. GLENNON: Because you're -- you're --

23 MR. BLACK: Brian, make an objection, instruct
24 him not to answer. Those are your options. He asked me
25 a question.

1 MR. GLENNON: No. I started to ask you not to
2 interrupt him and let him finish his answer. He
3 indicated that he wanted to finish his answer, and he's
4 allowed to do that.

5 Mr. Murray, were you finished with your
6 answer?

7 THE WITNESS: No, sir, I was not.

8 MR. BLACK: Now you're instructing the
9 witness.

10 MR. GLENNON: You can complete your answer.

11 And then, Mr. Black, you can ask whatever
12 follow-up questions you want.

13 Go ahead, Mr. Murray.

14 THE WITNESS: Thank you.

15 Repeat deficiencies, particularly within the
16 Bureau of Prisons processes that they utilize to conduct
17 customer facility monitoring or CFMs, and the way their
18 audit tools are designed tend to be rather hierarchal,
19 if I could use that -- make that statement.

20 That is to state -- for example, if a repeat
21 deficiency is a function of a process that was perceived
22 to have failed or perceived to have actually not been
23 fully complied with, those -- those specific areas or
24 areas of deficiency or opportunities for improvement
25 might be very discrete and very different.

1 So for example, if you have three cases that
2 involve an individual that has a liver condition, an
3 individual that has HIV, an individual that has cardiac
4 case, hypertension, an individual that has multiple
5 medical chronic care conditions, the bureau could come
6 in and find that -- on a CFM that we didn't fully comply
7 with the -- the treating physician, didn't -- or the
8 medical staff didn't fully comply with one of those
9 components, each of which could be quite different that
10 was not complied with for a patient that was a liver
11 patient, or a cardiac patient, or a patient that was an
12 HIV patient.

13 Again, there may have been one area, or one
14 step, or one test that could have been drawn that wasn't
15 drawn timely. A variety of issues, but -- but each of
16 those deficiencies could be different deficiencies, but
17 they all roll up under the bureau's structure to -- from
18 their more hierarchal view, that the facilities --
19 health services maybe didn't fully comply with all the
20 requirements that were necessary in the treatment of
21 that patient or that patient's condition.

22 So that -- that's what I was trying to explain
23 that a repeat deficiency, in and of itself, is -- is --
24 it -- they could all be different individual
25 deficiencies, but they all roll up under a type of

1 treatment that relates to something that is unique in

2 each case that is evaluated by the auditor.

3 So that's -- that was my concern about repeat

4 deficiencies. So they, in and of themselves, do not

5 necessarily mean that the practices are not, you know,

6 are inconsistent. It may be that they are -- each of

7 them are different deficiencies, but they all, perhaps,

8 impact the treatment in those individual cases, but each

9 of those cases could be -- could be potentially

10 differing types of deficiencies. That's -- that's what

11 I was trying to explain.

12 (Deposition Exhibit 579 marked.)

13 BY MR. BLACK:

14 Q. Can you turn to tab 14, please.

15 Tab 14 is going to be Exhibit 579. The bottom

16 of page 1, do you see that you sent an e-mail that's

17 part of this e-mail thread?

18 A. I do. Mmmm-hmmm. Let me look -- let me

19 review this quickly. This is -- yes, at the bottom of

20 this page I see that.

21 Yes. That's correct. Mmmm-hmmm.

22 Q. Does this appear to be a true and correct copy

23 of an e-mail thread that you participated in?

24 A. Yes, it does. Mmmm-hmmm.

25 Q. Do you see in the -- above "we hope this

1 information is helpful," that last sentence of that
2 e-mail, the second to last paragraph of your e-mail
3 starts "by the way." And it says, "while I originally
4 thought that the outlier in the number of CFM safety
5 findings at Cibola might have been more of a BOP auditor
6 issue, our internal audits of the facility this year
7 suggest that this is indeed an area that needs
8 attention, as it also scored very poorly during our
9 internal audit."

10 Do you see that?

11 A. Yes, I do see that.

12 Q. Do you remember why -- this is in regard to
13 the Cibola facility; is that correct?

14 A. Yes, sir it is.

15 Q. And can you turn to page 3 of this document.
16 At the top of page 3, I think you'll see it will say
17 "overall CFM analysis," and then at the bottom there's
18 an "NOC's analysis," and "NOC content analysis" section.

19 Do you see that?

20 A. Yes, sir. I do see that.

21 Q. And NOC refers to notice of concern; is that
22 correct?

23 A. That is correct. Yes.

24 Q. Okay. And CFMs were audits conducted by the
25 BOP of CCA facilities; is that correct?

1 STENOGRAPHIC SHORTHAND REPORTER'S CERTIFICATION

2 - - -

3 I, VICTORIA L. VALINE, CSR NO. 3036, RMR, CRR,
4 RSA, certify: That the foregoing proceedings were
5 remotely taken before me via videoconference at the time
6 herein set forth; at which time the witness was duly
7 sworn; that a record of the proceedings was made by me
8 using machine shorthand which was thereafter transcribed
9 under my direction; and that the transcript is a true
10 record of the testimony so given.

11 Further, that if the foregoing pertains to the
12 original transcript of a deposition in a federal case,
13 before completion of the proceedings, review of
14 transcript was requested.

15 The dismantling, unsealing, or unbinding of
16 the original transcript will render the Stenographer's
17 Certificate null and void.

18 I further certify that I am not financially
19 interested in the action, and I am not a relative or
20 employee of any attorney of the parties, nor of any of
21 the parties.

22 Dated this 30th day of October, 2020.

23 

24 Victoria L. Valine, CSR License #3036
25